Supreme Court, U.S.
FILED

No. 951189 JUL 12 1995

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In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

ROCKY E. URBAN
PETITIONER

VS.

STATE OF KANSAS
RESPONDENTS

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# PETITION FOR WRIT OF CERTIORARI

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ROCKY E. URBAN
RT 1 BOX 680
COLBY, KANSAS 67701
(913) 462-3711

31 pp

## QUESTIONS PRESENTED

1. DID THE THOMAS COUNTY COURT HAVE PROPER JURISDICTION OVER ROCKY URBAN?

2. DID ROCKY URBAN PROPERLY DEFEND HIS OWN INTEREST IN THE PICK-UP, BY TAKING POSSESSION OF THE PICK-UP?

3. DID THE ARRESTING OFFICER ERROR IN HIS INVESTIGATION?

4. SHOULD THE INSUFFICIENT FUNDS CHECK BE PROSECUTED FIRST BEFORE THIS ACTION WAS BROUGHT ON BY THE DISTRICT ATTORNEY, WHEN IN FACT ROCKY URBAN MADE THE DISTRICT ATTORNEY AWARE OF THE INSUFFICIENT FUNDS CHECK GIVEN TO HIM BY STEVEN LAMPE BEFORE THE COMPLAINT WAS FILED.

5. DID THE COURT ERROR BY DENYING TESTIMONY PURSUANT TO K.S.A. 50-109?

6. DID THE COURT ERROR BY NOT ALLOWING TESTIMONY TOWARD THE SALE OF PROPERTY, IN THAT THERE WERE PARTS AND SERVICES RENDERED ON THE PICKUP BY ROCKY URBAN THAT REMAINED UNPAID FOR BY STEVEN LAMPE?

7. DID THE COURT ERROR BY DENYING THE ELECTION OF JURORS OBJECTED TO BY ROCKY URBAN, WHO WERE IN DIRECT CONFLICT TO ROCKY URBAN?

8. WAS THE DEFENDANTS OBJECTION TO THE P.I.K. INSTRUCTIONS RULED ON PROPERLY BY THE LOWER COURT?

9. WAS IT WITHIN THE LAW, FOR STEVEN LAMPE TO DECEIVE ROCKY URBAN WITH AN INSUFFICIENT FUNDS CHECK, TO TAKE POSSESSION OF THE VEHICLE THROUGH MISREPRESENTATION, WITHOURT THIS CREATING BREACH OF CONTRACT ON THE PART OF

STEVEN LAMPE WHO ISSUED THE INSUFFICIENT FUNDS CHECK?

10. DOES ROCKY URBAN HAVE TO GIVE UP HIS RIGHT TO HIS LABOR AND PARTS WITHOUT PAYMENT BY STEVEN LAMPE?

AUTHORTIES CITED


Light vs. Self . . . . . 1
K.S.A. 50-109. . . . . 1,2
K.S.A. 21-3707 . . . . . 1,2
Title 42 . . . . . 1
Civil Rights Act of 1871 . . . . . 1
Art.1, section 10 U.S.A. const.. . . . . 1
Sowers vs. Ohio civil rights Comm. . . . 1
People vs. Jacobs. . . . . 1,2,3
K.S.A. 21-3705 . . . . . 2
Equal Protection Clause. . . . . 3
14th Amend. U.S.A. Const.. . . . . 3
Adoption of Richardson . . . . . 3
Hanes vs. Kerner . . . . . 3

Comes now, the petitioner. Rocky E. Urban sui juris propia persona to assert that the Supreme Court consider this Petition for Writ of Certiorari. It is a well recongized fact that "A Writ of Certiorari will not be refused in a proper case." Light vs. Self. 138 Ark. 221 S.W. 369, 214 S.W. 746.

The Petitioner Rocky E. Urban does exert that his Civil Liberties guaranteed to him by the Constitution of the United States of America, has been violated by the Sate of Kansas, respodent.

The respondent State of Kansas violated K.S.A. 50-109. K.S.A. 21-3707. Equal Protection under the Law. CIVIL LIBERTIES GUARANTEED TO THE PETITIONER BY THE CONSTITUTION OF THE U.S.A. a violation of the "Conspiracy sections of the Civil Rights Act of 1871. Title 42 U.S.C. 1985 and 1986 and THE CONTRACT CLAUSE, pursuant to Article 1, Section

10 of the United States of America Constitution.

In the Sowers vs. Ohio Civil Rights Commission 252 N.E. 2d 463. The Supreme Court ruled that the Civil Liberties is guaranteed by the Constitution of the United States of America and the Equal Protection under the law was not to be set aside see People vs. Jacobs 27 Cal. App. 3rd 246. 103 Cal. Reptr. 546, 543.

The district court had no right to punish Rocky E. Urban for taking possession of his Parts and Labor and leaving the other party free to breach his contract with Rocky Urban and not to pay Rocky Urban for the parts and Labor involved. Rocky Urban would place the Court on JUDICIAL NOTICE, that to this day the bill has gone unpaid, dispite the fact that Rocky Urban has spent time incarcerated, been finded and being held in bondage for over a year.

The Supreme Court landmark ruling in People vs. Jacobs stated that there must be

equal protection under the Law, Rocky E. Urban should have gotten releif under, and pursuant to K.S.A. 21-3707. The court errored in allowing for Steven Lampe to gain releif and have the possession of the parts and labor belonging to Rocky Urban. The District court failed to prosecute the Worthless Check and thus is allowing Steven Lampe to break the Law without restitution to Roaky Urban. Steven Lampe was first to break the law pursuant to K.S.A. 21-3707 and FURTHER, K.S.A. 21-3705 WAS NOT PLACED INTO KANSAS STATUTE TO PROTECT WORTHLESS CHECK WRITERS.

In a case, THE COURT REFUSED to allow Rocky Urban to bring in K.S.A. 50-109. Rocky Urban contends that this District Court criminal action has been subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurities as well as subancing the possibility that even though innocent he may be found guilty."

So it is with Rocky E. Urban, who would contend that he is a law abiding citizen, is here to explain that there was no injured party exept for himself in the action against him.

It was only after the conversion and misrepresentation of Steven Lampe against Rocky E. Urban with a worthless check that Rocky E. Urban went to protect his property in the only way that was available to him at the time. It is the beleif of Rocky Urban that he took not the pick-up belonging to Steven Lampe, rather Rocky Urban took the parts and Labor belonging to himself. This action would allow for a contract between the two in which Rocky E. Urban had an undivided interest in the pick-up, which cannot and should not be overlooked or denied by the attorney and this Appellate Court.

Rocky Urban is asking for an equal protection under the law as is his right, pursuant to THE EQUAL PROTECTION CLAUSE, and that provision in the 14th Amendment which

prohibits a State from denying to any person within its jurisdiction the equal protection of the laws. "Equal protection clause of Federal Constitution requires that persons under like circumstances be given equal protection in the enjoyment of personal rights and the prevention and redress of wrongs." In re Adoption of Richardson, 251 C.A.2d 222, 59 Cal.Rptr. 323, 334. see also People vs. Jacobs 27 Cal.App.3d 246, 103 Cal. Rptr. 536, 543.

Rocky Urban, Petitioner would rely on Hanes vs. Kerner 404 U.S. 519 in that he need not meet the same standards as an attorney, when applying for this Writ.

Thus, the Petitioner formally request that this Court grant the Petition for the Writ of Certiorari to give Rocky E. Urban the opportunity to be heard on this issue, by an imparticial tribunal.

This is a certificate of good faith for justice and is restricted to the grounds herein and is not for delay of the court.

I submit this Petition in good faith.

Respectfully Submitted

Rocky Urban

Rocky E. Urban
Rt. 1 Box 680
Colby, Kansas 67701

Scott Showalter
Acting Thomas County Attorney
1401 Main; P.O. Box 96
Goodland, KS 67735
(913) 899-5981

IN THE DISTRICT COURT OF THOMAS COUNTY, KANSAS

| | | |
|---|---|---|
| STATE OF KANSAS,<br>Plaintiff | ) | |
| | ) | Case No. 94 CR 74 |
| vs. | ) | |
| ROCKY URBAN<br>Defendant. | ) | |

JOURNAL ENTRY

COMES NOW, the above entitled matter comes on for hearing this 26th day of May, 1994. The State appears by Scott Showalter, Acting Thomas Conty Attorney. The Defendant, Rocky Urban appears in person and without counsel.

THEREUPON, Vore Dire is conducted with a jury of six (6) being selected. The Defense lodges an objection to the original jury selection process. The Court denies the Defense Motion.

Opening statements are made by the

parties. The State calls Steve Lampe, Brandon Lampe, Ron Shalz, Alan Taylor, Mary Mesamor, Ray Schewrtzer, and Tom Jones. The State rests with the defense recalling Steve Lampe and thin calling the Thomas County Commissioners as witnesses. The Defense rest its case.

THEREUPON, Jury instructions are reviewed and given. Closing arguments are given by the parties. The Jury then returned a verdict of guilty to one count of Temporary Deprivation of Property, a class A Misdemeanor.

IT IS THEREFORE BY THIS COURT ORDERED, ADJUDGED, AND DECREED! The Defendant Rocky Urban is guilty of Temporary Deprivation of Property. Sentencing shall take place upon the completion of a P.S.I. Bond shall be continued.

IT IS SO ORDERED!

/s/Jack L. Burr
HONORABLE JACK L. BURR

/s/Scott Showalter
SCOTT SHOWALTER
Acting Thomas County Attorney

Scott Showalter
Acting Thomas County Attorney
1401 Main; P.O. Box 96
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IN THE DISTRICT COURT OF THOMAS COUNTY, KANSAS

| | |
|---|---|
| STATE OF KANSAS, Plaintiff | ) |
| | ) Case No. 94 CR 74 |
| vs. | ) |
| ROCKY URBAN, SS# 511 54 8493 Defendant. | ) |

JOURNAL ENTRY

COMES NOW, the above entitled matter comes on for sentencing this 6th day of July, 1994. The State appears by Scott Showalter, Acting Thomas county Attorney, Goodland, Kansas. The Defendant appears in person and without legal counsel.

THEREUPON, the court takes notice that the defendant Rocky E. Urban was convicted after a jury trial on May 26, 1994 to Temporary Deprivation of Property, class A misdemeanor

pursuant to K.S.A. 21-3705. THEREUPON, the State calls Steven Lampe to the stand to testify concerning the amount of restitution and damages done by the defendants acts. The defendant Rocky E. Urban then makes an oral motion to the court asking the jury's verdict be set aside based upon the jury's failure to consider the defense contention that the bad check written by the victim instigated this matter. The court denies the defense motion.

IT IS THEREFORE BY THIS COURT ORDERED, ADJUDGED AND DECREED that the defendant Rocky E. Urban having been found guilty of Temporary Deprivation of Property, class A misdemeanor shall be sentenced to serve one (1) year in the Thomas County jail. He further shall be ordered to pay court casts of $100.00 and probation fee of $25.00. The defendant shall be placed on one (1) year probation beginning immediately. However, as the primary condition of probation the defendant must return the victim's pickup by July 13th at 12:00 noon to

the Thomas county Sheriff, if the defendant has failed to return the vehicle then at that time he shall turn himself in to the Thomas County sheriff to be serving his year sentence. The bond that is currently being held by the Court shall be returned to the defendant.

IT IS SO ORDERED!

/s/Jack L. Burr
HONORABLE JACK L. BURR

/s/Scott Showalter
SCOTT SHOWALTER
Acting Thomas County Attorney

NOT DESIGNATED FOR PUBLICATION No. 72,328

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

ROCKY E. URBAN,
Appellant.

MEMORANDUM OPINION

Appeal from Thomas District Court; JACK L. BURR, judge. Opinion filed March 24, 1995. Affirmed

Rocky E. Urban, appellant pro se.

Scott Showalter, acting county attorney, and Robert T. Stephan, attorney general, for the appellee.

Before LEWIS, P.J., ELLIOTT, J., and DAVID W. KENNEDY, district Judge, assigned.

Per Curiam: Rocky E. Urban appeals his conviction for temporary deprivation of property, a class A misdemeanor.

Some time in September 1993, Steven Lampe approached Mr. Urban for an estimate of the cost to have an engine installed in his 1950 pickup truck. Mr. Urban told Mr. Lampe that he could install an engine for $950. Initially, Mr. Urban estimated that the work would take about 10 days. He did not complete the work until about 11 weeks later. When Mr. Lampe arrived to pick up the vehicle and pay Mr. Urban for his services, Mr. Urban presented two separate bills totaling approximately $3,200. According to Mr. Lampe, MR. Urban eventually agreed to accept $1,500 for the work done. Mr. Urban permitted Mr. Lampe to take possession of the vehicle. Due to bank error, Mr. Lampe's check was returned for insufficient funds.

Mr. Lampe contacted his attorney, Ron Shalz, who advised him to issue a second check in the amount of $1,500 plus a $10.00 charge to cover the insufficient funds check. Mr. Shalz and Mr. Lampe decided to file a civil action

to resolve the disagreement over the contract price. Some time after the second check was sent, Mr. Lampe and Mr. Shalz learned from the bank that neither check had been cashed. Mr. Shalz instructed Mr. Lampe to stop payment on the checks. In line with Mr. Shalz advice, Mr. Lampe then purchased a money order in the amount of $1,500 which he deposited at Mr. Shalz's office. Mr. Shalz then informed Mr. Urban by letter that the money order was available for him to pick up. Mr. Urban never picked up the money order.

There was some testimony that Mr. Urban had said that he filed an artisan's lien. Mr. Urban did not testify. There is nothing in the record that proved any lien was timely and properly filed with the register of deeds. Mr. Urban took the pickup truck without Mr. Lampe's permission. Mr. Urban discussed his taking of the vehicle with Sheriff Tom Jones. Sheriff Jones informed him that it was not legal for him to repossess the vehicle just on

the basis of his lien. Mr. Urban told Sheriff Jones that "even though it may be illegal for him to pick up the pickup, that he was not going to return it because it was the only way that he felt that he could get his money."

A Colby police department employee also contacted Mr. Urban and requested that he return the vehicle. In addition to Sheriff Jones' testimony that Mr. Urban had taken the pickup truck, Mr. Urban stipulated numerous times during trial that he had "repossessed" the vehicle. His position at trial was that his "repossession" was rightful because Mr. Lampe had gained possession of the pickup truck through the presentation of an insufficient funds check. Kansas law does not allow one who provides services for a motor vehicle to repossess it because the check received in payment was returned "insufficient funds." We need not address the issue of whether Mr. Urban could have repossessed the pickup truck if he had a valid lien because that issue is not

before us.

Mr. Urban's first issue on appeal is whether the district court had jurisdiction over the case. Mr. Urban does not devote any portion of his analysis to this issue but really only challenges the court's jurisdiction in his statement of the issues. "A point incidentally raised but no argued is deemed abandoned." McKissick v. Frye, 255 Kan. 566,578,876 P.2d 1371 (1994) (citing Brubaker v. Branine, 237 Kan. 488, 490, 701 P.2d 929 [1985]). This issue has been abandoned and will not be considered.

The second and ninth issues raised are essentially the same and will be addressed together. The issue is whether Mr. Urban properly defended his interest in the vehicle by taking possession of it. Mr. Urban attempts to justify his "repossession" of the vehicle by asserting that he had perfected an artisan's lien under K.S.A.

58-201. While K.S.A. 58-201 creates an interest in property for individuals who improve the personally through their own labor, the artisan's continued priority over the rightful owner's rights depends on his or her continued possession of the property or the filing of an appropriate document in the register of deeds office. After relinquishing possession of the pickup truck, Mr. Urban's continued priority over Mr.Lampe's rights depended on his filing in the office of the register of deeds within 90 days "a statement of the items of the account and a description of the property on which the lien is claimed, with the name of the owner thereof, in the county where the work was preformed and in the county of the residence of the owner." K.S.A. 58-201. Mr. Urban present this court with nothing to indicate that he met this filing requirement. Mr. Urban shoulders the burden of furnishing this court with a record sufficient to establish his claims of prejudicial error.

State vs. Richard, 252Kan. 872,874, 850 P.2d 844 (1993).

If Mr. Urban had timely filed the appropriate document, he might have been entitled to the methods of self-procession made available in the Uniform Commercial Code. See K.S.A. 58-202. Mr.Urban has not provided us with a record which is sufficient for us to review the decision of the trial court.

The third discernable issue on appeal is whether the arresting officer erred in his investigation. The exact nature of Mr. Urban's challenge under Issue III of his appellate brief is not entirely clear. Only a brief statement in Mr. Urban's analysis seems to correspond to this issue. Mr. Urban seems to argue that the investigating officer prepared his factual statement for the county attorney without an awareness of the fact that Mr. Lampe's check was dishonored by the bank. He

seems to suggest that had the investigating officer been aware that Mr. Lampe obtained possession of the pick-up truck upon the tender of an insufficient funds check, the officer would have concluded that Mr. Urban's "repossession" of the vehicle was proper and would not have had Mr. Urban arrested.

The investigating officer testified that he did not issue the arrest warrant for Mr. Urban. He prepared and issued to the county attorney his report and factual statement of the case. The county attorney decided to file criminal charges. In addition, despite Mr. Urban's perceived justification for "repossessing" the vehicle, once Mr. Lampe regained possession over the pickup truck, Mr. Urban was required to prepare and deliver a filing statement to the register of deeds within 90 days to secure his interest in the vehicle. This issue is without merit.

Mr. Urban's next issue seems to be that he was improperly prosecuted in the present case because his "repossession" was justified by the fact that Mr. Lampe paid him with an insufficient funds check. The fact that Mr. Lampe may have paid Mr. Urban for his labor did not give Mr. Urban the right to take the vehicle unless Mr. Urban perfected his interest by filing a statement in the office of the register of deeds. K.S.A. 1994 Supp. 21-3705 requires that the State prove that a defendant exerted unauthorized control without the owner's consent. Because Mr. Urban failed to prove he had perfected his security interest in the pickup truck, his interests in the vehicle were secondary to those of Mr. Lampe. Therefore, his subsequent taking of and control over the pickup was unauthorized and warranted his arrest and conviction.

The next issue seems to be that Mr. Urban should have been permitted to adjudicate the

potential negligence of the county attorneys involved in this case for not having prosecuted Mr. Lampe on the insufficient funds check charge. Mr. Urban attached a copy of K.S.A. 50-109 to his brief. This statutory provision sets forth the duties of county attorneys and other officials to prosecute individuals who violate the law.

Mr. Urban misunderstands the nature of the criminal proceeding below. He seems to believe that, once before the court, he could litigate every issue arising from the transaction he had with Mr. Lampe. He does not seem to understand that the sole issue before the district court was whether Mr. Urban had temporarily and unlawfully deprived Mr. Lampe of the use of his truck. Introduction of the insufficient funds check was necessary as part of the factual background of this case. However, whether the prosecutors of Thomas County improperly refused to to prosecute

another individual on a separate criminal charge is not germane to Mr. Urban's guilt on the deprivation of property charge.

"'Relevant evidence' means evidence having any tendency in reason to prove any material fact." K.S.A. 60-401(b). Admission of evidence on the basis of relevance is left to the discretion of the court. State vs. Harkness, 252 Kan. 510, 530, 847 P.2d 1191 (1993). Once it was established that Mr. Urban was without legal authority to exert control over the truck, continued discourse over the insufficient funds check was irrelevant to the issue of this case. The court did not abuse its discretion in limiting the testimony over the insufficient funds check charge.

Mr. Urban's precise challenge under his sixth issue is unclear. Apparently, he is challenging the trial court's decision to prohibit him from asking hypothetical questions

about the sale of property and the transfer of title. In essence, Mr. Urban was attempting to show that an individual who purchases property with an insufficient funds check does not take clear title to the property. The court disallowed the question because they sought legal conclusions which the witnesses were not qualified to offer. In addition, the questions were properly excluded because they were not relevant to the issue of Mr. Urban's guilt. The court did not abuse its discretion.

Prior to trial, Mr. Urban requested that "all teachers and their associates...be dismissed from this list of jurors and a new list of jurors be drawn up by excluding the college teachers and other teacher in schools." He argued that because complaining witness Mr.Lampe was a college professor, all individuals in that line of work or with spouses who teach should be excluded. The court denied Mr. Urban's request concerning

challenges for cause.

"A juror may be challenged for cause when the juror's state of mind with reference to the case or any of the parties is such that the court determined there is doubt that the juror can act impartially and without prejudice to the substantial rights of any party." State vs. Johnson, 253 Kan. 75, 85, 853 P.2d 34 (1993) (citing K.S.A. 22-3410[2][I]). Determinations of juror qualification are left to the discretion of the trial court and will not be disturbed on appeal absent a showing of prejudice. State vs. Mayberry, 248 Kan. 369,382,807 P.2d 86 (1991).

Mr. Urban has failed to demonstrate that the prospective jurors' status as teachers would prevent them from "act[ing] impartially and without prejudice" to his substantial rights in discharging their duties as jurors. Johnson,

253 Kan. at 85. Mr. Urban has failed to illustrate how the jurors were subject to challenge for cause based on any other statutory authorized reason. See K.S.A. 22-3410.

In Mayberry, the defendant challenged for case all potential jurors who possessed information of his prior murder convictions. Our Supreme Court affirmed the trial court's overruling of Mayberry's challenges for cause. The Mayberry court also ruled that "any error committed by the trial court in failing to discharge the challenged jurors could easily have been cured by Mayberry's use of peremptory challenges." 248 Kan. at 382.

In this case, the State offered to give all but one of its peremptories over to Mr. Urban so that he might exclude teachers who demonstrated any prejudice. Mr. Urban has failed to show how many teachers were actually

selected to sit on the jury. He has failed to cite to specific circumstances which would show that any particular juror was incapable of acting responsibly and without prejudice to his substantial rights. The court did not abuse its discretion in its rulings on jury selection.

Mr. Urban's final issue is not recited with legal clarity. It appears that Mr. Urban is challenging the jury instruction that set out the elements of the crime. PIK Crim. 3d 59.04 sets out those elements which the State must prove in order to sustain a conviction for unlawful deprivation of property. See K.S.A. 1994 Supp. 21-3705.

Our Supreme Court has encouraged the use of PIK instructions. See State vs. Dunn, 249 Kan. 488, 492-93, 820 p.2D 412 (1991) (absent need for modification of the PIK instructions, "PIK instructions and recommendations should be

followed"); State vs. Pioletti, 246 Kan. 49, 55-59, 785 P.d 963 (1990) (same). Mr. Urban does not argue that the instruction should have been modified, nor does he articulate with preision his objection to this instruction. This instruction properly and fairly states the law and communicates the elements which must be proved as required by our legislature. See State vs. Walker, 252 Kan. 279, 295, 845 P.2d 1 (1993) ("If the instructions properly and fairly state the law as applied to the facts in the case, . . . then the instructions do not constitute reversible error."). The court did not err in issuing the PIK instruction.

Affirmed.

SUPREME COURT ORDER DISTRICT CASE NO.94CR74

IN THE SUPREME COURT

OF THE STATE OF KANSAS

PRO SE

ROCKY URBAN
RR1 BOX 395
COLBY, KS 67701

STATE OF KANSAS, APPELLEE,
V NO. 94-72328-AS
ROCKY E. URBAN, APPELLANT.

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING ACTION TAKEN BY THE COURT:

PETITION AND CROSS PETITION FOR REVIEW BY APPELLANT ROCKY URBAN.
CONSIDERED BY THE COURT AND DENIED.

DATE: 06/13/95

CAROL G. GREEN
CLERK

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Petition for the Writ of Certiorari, has been placed in the United States Mail, postage prepaid on this 10 day of July 1995 and properly addressed to:

SCOTT SHOWALTER
ATTORNEY AT LAW
P.O. BOX 96
GOODLAND, KANSAS 67735
(913) 899-5981

and orginal and copies to:

Supreme Court Clerk
Office of the Clerk
1-1st. Street, N.E.
Washington, D.C. 20543

Rocky Urban